

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2730 OF 2021**

Sanjay Gajanan Budhawale	...	Applicant
Versus		
The State of Maharashtra	...	Respondent

Mr. Rahul Dhaigude , for the Applicant.

Mr. A. A. Palkar, APP, for the State-Respondent.

CORAM : V. G. BISHT, J.

**RESERVED ON : 24th November, 2021.
PRONOUNCED ON : 7th December, 2021.**

PC:-

. The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in C.R. No. 71 of 2020 registered with Pusegaon Police Station, District- Satara for the offences punishable under Sections 302, 143, 147, 148, 149 and 188 of the Indian Penal Code and Sections 3, 5 of the Arms Act, Section 11 of COVID-19 Act and Section 51(b) of the Maharashtra Public Records Act.

2 It is the case of prosecution that on 24/04/2020 the informant's son Himmat Devaba Budhawale ('deceased' for short) and Prakash

Mahadev Madane, a relative, had been to river for catching the fish. While deceased was returning after laying net in the river, it is alleged, that accused Balu Gajanan Budhawale, Sanjay Gajanan Budhawale (applicant), Gajanan Rambhaji Budhawale, Amit Nanaso Budhawale and Suraj Nanaso Budhawale came there and on account of earlier dispute started shoving the deceased. It is further alleged that the accused Suraj Nanaso Budhawale and applicant threw stones at Prakash Madane while accused Balu Gajanan Budhawale and Amit Budhawale dragged the deceased out of pond, beat him by fist and kick blows. It is further alleged that the applicant and accused Gajanan Budhawale then held the deceased by his legs whereas accused Amit Budhawale held both the hands of the deceased. It is then alleged that accused Balu Gajanan Budhawale hit a big stone on the head and face of the deceased. Similarly, the accused Suraj Budhawale also hit the stone on the head and face of the deceased. Thereafter, the applicant and others also assaulted the deceased by means of stones as a result of which the deceased died. The informant accordingly lodged the report.

3 Mr. Dhaigude, learned Counsel for the applicant, submits that there is inconsistency between the statement of Santosh Devaba Budhawale, brother of deceased and his statement recorded under

Section 164 of the Code of Criminal Procedure ('Cr.P.C.' for short) by JMFC, Vaduj. Similarly, according to learned Counsel, although the prosecution claims that Prakash @ Mahesh Mahadev Madane was accompanying the deceased but his statement recorded under Section 164 of Cr.P.C. by learned JMFC, Vaduj, does not support the case of prosecution. Learned Counsel also invited my attention to the statement of informant recorded under Section 164 of Cr.P.C. by learned JMFC, Vaduj, which is also inconsistent with his own FIR. For all these reasons, applicant deserves to be enlarged on bail, argued learned Counsel.

4 Mr.Palkar, learned APP, on the other hand, does not dispute the above discrepancy pointed out by learned Counsel for the applicant and according to him, it was the accused Balu Gajanan Budhawale, who had hit the stone on the head and face of the deceased. In such circumstances, according to learned APP, an appropriate order may be passed.

5 Perused the investigation papers and statements of witnesses. I have also gone through the Postmortem report.

6 The cause of death shown in the postmortem report is "severe

cerebral haemorrhage due to severe face and Head Injury due to Hard and Blunt object (Fracture of skull and all sutures of skull) and bones.”

7 From the FIR it is clear that it was Balu Gajanan Budhawale, who had hit a big stone on the head and face of the deceased and later on, the applicant and other accused also had beaten the deceased by means of stones. However, the statement of informant recorded under Section 164 of Cr.P.C. shows that the present applicant and accused Suraj Budhawale had held the deceased by his legs while accused Balu Budhawale had hit a big stone on the face of the deceased. This statement nowhere shows that the applicant had assaulted the deceased by means of stones as is claimed in the FIR.

8 Similarly, the prosecution has also claimed that Prakash Madane was accompanying the deceased and was even assaulted by some of the accused by means of stones. According to prosecution, this witness had witnessed the incident but his statement recorded under Section 164 of Cr.P.C. shows that although he had been to the pond along with his daughter but since she started crying he returned back to his house. According to him, he does not know who had assaulted the deceased. Thus, the so called eye witness does not support the case of prosecution.

9 Similarly, the statement of Satish Devaba Budhawale i.e. the brother of deceased is consistent with contents of FIR but his statement recorded under Section 164 of Cr.P.C. by learned JMFC, Vaduj, nowhere shows that the applicant had also assaulted the deceased by means of stone.

10 For the aforesaid reasons and having regard to the material on record, in my considered opinion, the applicant has made out a case for bail. Hence, the following order.

ORDER

(i) **Applicant-Sanjay Gajanan Budhawale shall be released on bail in C.R. No. 71 of 2020 registered with Pusegaon Police Station, District-Satara on his executing P .R. bond in the sum of Rs. 20,000/- with one or more sureties in like amount.**

(ii) **The applicant shall not tamper with the prosecution evidence and shall attend the trial regularly.**

(iii) **The observations made herein-above are prima-facie in its nature for the purpose of deciding the bail application only. The trial Court shall not be influenced by the observations while deciding the case on merits.**

(iv) Bail before the trial Court.

(v) The application is allowed in the aforesaid terms and stands disposed of accordingly.

(V. G. BISHT, J.)